



THE PRE-TRIAL JUDGE

Case No.: **STL-11-01/PT/PTJ**

The Pre-Trial Judge: **Judge Daniel Fransén**

The Registrar: **Mr. Herman von Hebel**

Date: **28 November 2012**

Original language: **English**

Classification: **Public with confidential and *ex parte* annex**

THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

THIRD DECISION ON VICTIMS' PARTICIPATION IN THE PROCEEDINGS

Office of the Prosecutor:
Mr. Norman Farrell

Counsel for Mr. Salim Jamil Ayyash:
Mr. Eugene O'Sullivan

Legal Representative of Victims:
Mr. Peter Haynes

Counsel for Mr. Mustafa Amine Badreddine:
Mr. Antoine Korkmaz

Counsel for Mr. Hussein Hassan Oneissi:
Mr. Vincent Courcelle-Labrousse

Counsel for Mr. Assad Hassan Sabra:
Mr. David Young



I. INTRODUCTION

1. In this Decision, the Pre-Trial Judge rules on a resubmitted application by a person requesting status as a victim participating in the proceeding (“VPP status”) that was previously rejected due to incompleteness. This application has been transmitted with the assistance of the Tribunal’s Victims’ Participation Unit (“VPU”) pursuant to Rule 51(B)(iii) of the Rules of Procedure and Evidence (“Rules”).

II. PROCEDURAL BACKGROUND

2. On 8 May 2012, the Pre-Trial Judge issued a public decision, with a confidential and *ex parte* annex, on VPP status pursuant to Rule 86.¹ In that First Decision, the Pre-Trial Judge authorised 58 of 73 applicants to participate in these proceedings. VPP status was declined with respect to the 15 remaining applicants due to the incompleteness of their applications. Among those 15 rejected applicants was V029. With respect to those rejected applications, the Pre-Trial Judge noted at the time that:

A finding that an Application is incomplete is related to the supporting materials which accompanied those applications, and is not equivalent to a finding that an applicant should be denied VPP status. The Pre-Trial Judge states that applicants whose applications have been found to be incomplete may resubmit their applications for VPP status, with the assistance of the VPU, and with the supplementary materials required.²

3. On 3 September 2012, the Pre-Trial Judge issued a second decision after having reconsidered additional new requests for VPP status by applicants who had been previously rejected in the First Decision due to incompleteness.³ The Pre-Trial Judge granted VPP status on some of these applicants and joined them to the same group of victims identified in the First Decision.⁴

4. On 2 November 2012, the VPU resubmitted the application by V029, in consolidated form, including further supplementary material.⁵

¹ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Decision on Victims’ Participation in the Proceedings, 8 May 2012, Public with confidential and *ex parte* annex (“First Decision”).

² First Decision, para. 107.

³ STL, *Prosecutor v. Ayyash et al.*, Second Decision on Victims’ Participation in the Proceedings, 3 September 2012, Public with confidential and *ex parte* annex (“Second Decision”).

⁴ Second Decision, p. 5.

⁵ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Further Transmission of Applications for the Status of Victim Participating in the Proceedings, Including Retransmitted and New Applications, 2 November 2012, Public with confidential and *ex parte* annexes.

III. REASONS FOR THE DECISION

5. Pursuant to Rule 86 and the First Decision, the Pre-Trial Judge reconsiders whether V029 may be granted VPP status. The relevant legal analysis of the law applicable to a determination of VPP status was outlined in the First Decision.⁶ That analysis applies to the Pre-Trial Judge's assessment in this Decision.

A. Mandatory criteria

6. Rule 86(B) prescribes the criteria to be applied when determining VPP status. The first four criteria in Rule 86(B)(i)-(iv) are mandatory considerations.⁷ With respect to V029, the first three criteria will be analysed in the confidential and *ex parte* annex to this Decision. The reasons for the classification of the annex as confidential and *ex parte* are outlined in Section VI of this Decision. The Pre-Trial Judge considers that V029 fulfils each of the first three mandatory criteria in Rule 86(B)(i)-(iii).

7. The fourth mandatory criterion, pursuant to Rule 86(B)(iv), requires the Pre-Trial Judge to consider whether the participation of V029 would be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial. Having analysed the application of V029, the Pre-Trial Judge is satisfied that there are no reasons, at this stage, to conclude that granting VPP status to V029 would be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

B. Discretionary criteria

8. With respect to the remaining criteria prescribed in Rule 86(B)(v)-(x),⁸ which are of a discretionary nature, the Pre-Trial Judge has analysed the application of V029 in the manner

⁶ First Decision, Sections III and IV.

⁷ Those criteria are: (i) whether the applicant has provided prima facie evidence that he is a victim as defined in Rule 2; (ii) whether the applicant's personal interests are affected; (iii) whether the applicant's proposed participation is intended to express his views and concerns; and (iv) whether the applicant's proposed participation would be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

⁸ Those discretionary criteria are: (v) whether the applicant having relevant factual information pertaining to the guilt or innocence of the accused is likely to be a witness; (vi) whether the legitimate personal interests of the applicant at stake in the trial are different from those of other victims participating in the proceedings, if any; (vii) whether the proposed participation by the applicant would jeopardise the appearance of integrity, dignity, decorum and objectivity of the proceedings; (viii) whether the proposed participation would cause unnecessary delay or inefficiency in the proceedings; (ix) whether the proposed participation would impact negatively on the security of the proceedings or of any person involved; and (x) whether the proposed participation would otherwise be in the interests of justice.

consistently employed in previous decisions on VPP status.⁹ On the basis of the information and supporting documents submitted before the Pre-Trial Judge, and having regard to the discretionary criteria, the Pre-Trial Judge finds no reason to deny the participation of V029.

9. For the foregoing reasons, the Pre-Trial Judge is satisfied, having conducted an assessment of the material in the new consolidated application of V029 filed by the VPU on 2 November 2012, that V029 fulfils the requirements, as set forth in the Rules, for being granted VPP status.

IV. COMMON LEGAL REPRESENTATION AND GROUPING OF VICTIMS

10. The principles governing the common legal representation of victims participating in the proceedings (“VPPs”) were clarified in the First Decision,¹⁰ and apply *mutatis mutandis* to the present Decision. Rule 86(C)(ii) provides that victims shall participate in the proceedings through legal representatives, unless otherwise authorised by the Pre-Trial Judge. Similarly to previous decisions on VPP status, the Pre-Trial Judge considers that V029’s participation in the proceedings should be through a legal representative.¹¹

11. Furthermore, Rule 86(D) requires the Pre-Trial Judge to determine the appropriateness of common legal representation for VPPs with regard to the considerations prescribed in Rule 86(D)(i)-(iii).¹² These provisions suggest that unless there are valid reasons to justify not doing so, the VPPs are presumed to be treated as a single group.¹³

12. On reviewing the application by V029, the Pre-Trial Judge finds that there appears to be no valid reason to justify distinguishing V029 from the VPPs whose status was recognised in the First and Second Decisions, and whose group was constituted at that time.¹⁴ Accordingly, V029 shall be joined to the group of VPPs identified in the First and Second Decisions.¹⁵

⁹ First Decision, para. 102; Second Decision, para. 9.

¹⁰ First Decision, paras 108-128.

¹¹ First Decision, para. 112; Second Decision, para. 14.

¹² These criteria are: (i) any conflicting interests that may hinder common representation; (ii) any shared or similar interests that may facilitate common representations; and (iii) the rights of the accused and the interests of a fair and expeditious trial. The ultimate decision by the Pre-Trial Judge is non-appealable.

¹³ First Decision, paras 119-120; *see also*, Second Decision, para. 15.

¹⁴ First Decision, para. 127; Second Decision, para. 16.

¹⁵ *Ibid.*

V. CONFIDENTIALITY

13. This Decision is classified as “public”, with an individualised assessment of the application presented largely in an attached confidential and *ex parte* annex. This approach conforms with the Tribunal’s practice in previous VPP status decisions, which aims to strike a balance between ensuring transparency in the proceedings as enshrined in Rule 96 (A),¹⁶ and ensuring the protection and confidentiality of Applicants and their applications.¹⁷

14. For the same reasons advanced in previous VPP status decisions, the Pre-Trial Judge considers that withholding the application and identity of V029 is justified at this stage of proceedings in order to allow the Applicant to seek protective measures pursuant to Rule 133, should he wish to do so.¹⁸ A request to that end should be submitted to the Pre-Trial Judge as soon as possible, and must include a risk assessment carried out by the Victims and Witnesses Unit consistent with the established practice.¹⁹

¹⁶ Rule 96(A) STL RPE provides that “[s]ubject to sub-paragraph (B), pre-trial filings, proceedings and orders shall be public, unless otherwise provided by the Rules or decided by the Pre-Trial Judge at the request of a Party.”

¹⁷ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Decision on Defence Motion of 17 February 2012 for an Order to the Victims’ Participation Unit to Refile its Submission *inter partes* and Inviting Submissions on Legal Issues Related to Applications for the Status of Victim Participating in the Proceedings, 5 April 2012 (“5 April 2012 Decision”).

¹⁸ First Decision, para. 131; Second Decision, para. 17.

¹⁹ *Ibid.*

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rules 86 and 133 of the Rules,

GRANTS the status of victim participating in the proceeding to V029 who shall form part of the group of victims constituted by the First Decision and the Second Decision.

ORDERS the VPU to notify V029 of the present Decision, and the First Decision, insofar as it relates to V029's application.

ORDERS the Registrar to provide the Legal Representative of Victims with V029's individual application and the relevant material in the case file related thereto by 5 December 2012.

ORDERS that the annexes to the "Further Transmission of Applications for the Status of Victim Participating in the Proceedings, Including Retransmitted and New Applications", filed by the VPU on 2 November 2012, remain confidential and *ex parte* until further order.

ORDERS that the annex to this Decision remain confidential and *ex parte* until further order.

ORDERS the Legal Representative of Victims to submit to the Pre-Trial Judge, by 11 January 2013, any request for appropriate measures considered necessary to ensure the privacy and protection of V029, together with a risk assessment carried out by the Victims and Witnesses Unit.

Done in Arabic, English and French, the English version being authoritative.

Leidschendam, 28 November 2012



Case No. STL-11-01/PT/PTJ


Daniel Fransen
Pre-Trial Judge
